> of this payment schedule and SCE&G has been making monthly payments, subject to a true up to invoices, until the final payment schedule is agreed upon. ORS is concerned that this matter has not been brought to a timely resolution as provided for in the Amendment. This dispute was submitted to the DRB in August 2016, and may be the first issue addressed by the DRB on this Project.

There are also changes to the EPC Contract structure that cause ORS concern. With regard to the federal production tax credit completion incentive, ORS prefers an incentive structure that would only provide the full incentive if the current production tax credit expiration dates are met, and would be reduced on a graduated scale if Congress extends the expiration dates.

ORS is also concerned about the level of price surety offered by the Option. Although ORS has received assurances from SCE&G and WEC executive management that WEC will abide by its commitment to complete the Project for the stated price, the avenues of recourse available to SCE&G should WEC demand additional funding are limited.

ORS is concerned about WEC's ability to absorb potential financial losses that SCE&G's sensitivity studies identify as possible if productivity and production are not significantly improved. The potential financial impacts identified in the sensitivity study are in the hundreds of millions of dollars. Under the revised EPC Contract structure outlined in this Petition, those costs would have to be borne by WEC or its parent company Toshiba. WEC has assured ORS that it recognizes the potential risk regarding the Units and Southern Company's Vogtle project, which has a similar contract, and is prepared to proceed. WEC asserts it can complete both projects on schedule and understands the reputational damage that could occur in the world market if WEC fails to deliver or reneges on the South Carolina or the Georgia contracts.

ORS also has concerns about the relationship and co-operation between SCE&G and WEC in the context of a "fixed price" contract. Historically, fixed price contracts have been more adversarial and confrontational than other methods of contracting. Although the DRB is designed to handle conflicts and disputes expeditiously, it is not intended to be the preferred means to resolve all contract issues.

In addition, "fixed price" contracts have generally resulted in reduced participation and influence by the owners of the construction project. The sentiment and approach adopted by the contractor is generally, "we have guaranteed you the project for this price; leave us alone and we will deliver." This is not an acceptable approach. ORS regards SCE&G's participation as essential to the satisfactory completion of the Project.

In response to ORS's concerns, ORS has been assured by SCE&G and WEC executive management that they expect to have a co-operative and collegial relationship for the remainder of the Project. However, such a relationship has yet to be fully demonstrated since the Amendment was signed. More specifically, SCE&G and WEC have not been able to negotiate a mutually acceptable milestone payment schedule and have had a continuing conflict over the format of Change Order proposals. Recent Change Order proposals have been "fixed price" proposals, and in some recent cases WEC is attempting to limit its pricing disclosures in Change Orders, resulting in a lower level of detail than was previously available. This lower level of detail makes it difficult for ORS to assess the price and construction methodology. It is critical to ORS's review process that future Change Order proposals be supported by adequate price disclosure by WEC.

Q. PLEASE DISCUSS THE EPC CONTRACT OPTION.

A. The largest cost increase ($505.5 million) in this Petition is associated with the Option. The premium associated with electing the Option is calculated by taking the difference between the cost WEC can charge to complete the Units under the Option and the corresponding price that was embedded in the schedules underlying Order No. 2015-661. The documentation provided to justify the Option cost is primarily based on either (1) establishing a comparison of the additional costs of the Option to forecasts of costs that WEC would charge if the Project proceeded under the previous contractual basis; or (2) a subjective analysis of the fixed price contract with little objective evidence of what the actual cost savings from those subjective benefits would be. The Company focuses its assessment of the value of the Option on the risk reduction achieved via the transfer of price risk to WEC. The presumed reduction in day-to-day scope changes and the resulting distraction of the dispute resolution process are cited as key benefits of the Option. However, no attempt was made to quantify these benefits. While I can agree that these benefits could accrue to the Project and that these benefits could reduce the friction and distraction caused by continuing adversarial negotiations over scope changes, it is difficult to assign a monetary benefit to these changes; and therefore, it is not possible to quantify their contribution to the value of the Option.

Perhaps the best justification for the Option is provided in the sensitivity studies offered in the testimony of Dr. Joseph M. Lynch, which indicate that SCE&G believes several hundreds of millions of dollars will be saved by exercising the Option compared to continuing on the basis of current contract terms. This will be discussed later in my testimony.

However, since the start of the Project, WEC has not consistently demonstrated its ability to meet contractual commitments. The benefit to the ratepayers from the Option is only as good as WEC's financial ability and willingness to stand behind the EPC Contract. Based on our previous experience in the Project, ORS has little confidence in WEC's assurances that it will be able to deliver on its "fixed price" commitment.

While ORS understands the calculation of the $505.54 million for the Option as it relates to EPC Contract costs, the Option was not constructed in such a way that a listing of itemized costs total the premium. Rather, it represents an overall agreement that takes into account both the costs to complete the project and a value WEC has assigned to its risk associated with fixing these costs. As such, ORS does not have sufficient documentation to justify a specific list of costs making up the Option. However, ORS does recognize that there are benefits to the Option, but only to the extent that SCE&G guarantees its ratepayers that the Option will truly fix the cost of the Project for those items and scopes included in the Option and that any additional EPC Contract costs (other than for changes in law or other very specific items such as force majeure events) will not be borne by SCE&G ratepayers. Absent such a guarantee from SCE&G, ORS could not support the $505.5 million cost associated with the Option.

Q. PLEASE DISCUSS THE COSTS ASSOCIATED WITH THE AMENDMENT TO THE EPC CONTRACT.

A. The Amendment includes $137.5 million in costs to resolve outstanding disputes. While there have been previous amendments to the EPC Contract, those amendments were that any additional EPC Contract costs (other than changes in law or other very specific items such as force majeure events) will not be borne by SCE&G ratepayers, ORS's concerns regarding the potential impacts of this schedule uncertainty are somewhat diminished.

ORS recognizes that the change to the "fixed price" EPC Contract is designed to shift the risk of meeting the revised GSCD's to WEC. However, ORS must consider what happens to the Project if these dates are not met and WEC is not able to shoulder the large financial burden that Dr. Lynch's sensitivity studies predict that WEC would incur under such a scenario. WEC executive management assured SCE&G and ORS that WEC will abide by the terms of the EPC Contract and absorb the losses that are forecasted. WEC cited its need to fulfill the terms of the contract in order to secure future business and the reputational damage it would suffer if it were to default as the prime motivations for completing the Project under the currently proposed terms. However, ORS remains skeptical for reasons previously outlined in the discussion of the Option.

In summary, ORS recommends that the Commission approve the proposed revised GSCDs, recognizing that these are contractual dates and accurately reflect what is included in the Amendment, subject to certain conditions discussed below regarding the BLRA milestone schedule.

Q. PLEASE DISCUSS THE REVISED BLRA MILESTONE SCHEDULE.

SCE&G provided proposed revisions to the BLRA milestone schedule and the status of milestones already completed in Exhibit 1 of the Petition and in Mr. Byrne's direct testimony as Exhibit SAB-2. The revised dates reflect the impact of changing the GSCDs and other adjustments. ORS is concerned regarding the impact of Fluor's fully resourcecompares them with current ratios (1.22 and 1.21, respectively) to establish that those he uses in his study are conservatively lower and that using the current rates would make the "fixed price" option even more attractive.

Dr. Lynch's assumptions and the scenarios selected are appropriate and meaningful. His selections of the "Base Case" for labor growth rates (2.9%) and "Most Likely" range for performance factors (1.5 to 2.0) cases are reasonable and the boundaries selected for the other cases also represent reasonable limits and are appropriately represented. The results demonstrate that for any reasonable scenario, the "fixed price" option is a good deal for SCE&G. For the purpose here, I will confine my remarks to only the "Base Case/"Most Likely" case presented by Dr. Lynch.

Referring to the "Cost-to-Complete the Units" chart on page 8 of Dr. Lynch's testimony and using the second from the bottom line, at a performance factor of 1.5 the cost to complete is about $3.7 billion compared to the "fixed price" amount of $3.345 billion. At a performance factor of 2.0, the cost to complete is approximately $4.2 billion. This indicates that SCE&G expects WEC to lose from $355 million to $855 million on this Project irrespective of penalties or bonuses. If the labor growth rates are higher than the base case the losses would be even higher. This is a cause for concern.

If WEC is in fact willing to absorb losses and meet the obligations of the EPC Contract, then this is a good deal for both SCE&G and its ratepayers compared to the alternative. However, the benefits to the ratepayer are not so apparent if WEC does not meet its obligations. If WEC were to succeed in demands for additional funds to complete the Project, the ratepayers would bear the burden, not SCE&G. To the extent that SCE&G

settlement, you characterize it as good for ratepayers, you've called it a guarantee, and you have no idea what the financial impacts would be if there's a default on this contract.

A The guarantee is under the terms of the EPC contract. We've had meetings with Westinghouse where senior Westinghouse management assured us that they were committed to finishing this project. We've discussed the issue with SCE&G; they have assured us that Westinghouse has told them they're committed to finishing the project, that it's very important to their brand. I can't speculate on hypothetical situations until we see what they are. And I think that Gary's testimony talks about potential costs that Westinghouse would have to bear – not necessarily that Westinghouse would walk away; it's just that Westinghouse should have to absorb those costs.

Q Has the ORS made an assessment of the financial health of Toshiba/Westinghouse and their ability to absorb $800-$900 million in excess costs for this project?

A We've followed what is in the news articles about the health of Toshiba and Westinghouse. We're not privy to their private balance sheets.

Q Have you asked them to provide you information about their financial *bona fides*, their ability to absorb that

cost?
A As part of the EPC contract agreement, they do have a guarantee that would be available, you know, during any litigation.
Q That's not my question, though, Ms. Powell. My question is, has ORS asked Toshiba/Westinghouse to provide any verification of its financial capacity to absorb $800-$900 million of losses – the very amount of losses that your own witness says he's concerned about? Have you evaluated their ability to bear those losses?
A As I mentioned before, we have looked at the publicly available information. We haven't gone beyond the publicly available information in that particular case. We have had discussions with Westinghouse and with SCE&G about their level of commitment to the project and whether they think they can finish the project.
Q Did they tell you everything is great?
A They said that they are committed – Westinghouse said they were committed to the project and they were committed to finishing the project.
Q And did they say they were committed to the project three years ago? Everything was great, back then?
A I – Westinghouse is still here, and CB&I isn't.
MR. GUILD: Well, that's all the questions I have. Thank you.